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December 5, 1994

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Ex Parte Presentation Concerning Children's
Television Programming (MM Docket No. 93-48) and
The Cable Television Consumer Protection and
Competition Act of 1992: Rate Regulation (MM
Docket Nos. 92-266, 93-215).

Dear Mr. Caton:

Pursuant to Section 1.1206 of the Commission's Rules, this letter serves as notice of an ex parte presentation in the above-referenced proceedings. On December 2, 1994, David Britt and Gary Knell of Children's Television Workshop ("CTW") met with Chairman Reed Hundt; Michael Katz, Chief Economist of the Office of Plans and Policy; Roy Stewart, Chief of the Mass Media Bureau; and Renee Licht, Acting Deputy Chief of the Mass Media Bureau.

The purpose of this meeting was to discuss CTW's position regarding children's television programming, as previously advocated in its comments and reply comments in MM Docket No. 93-48, and its position that the cable "going-forward" rules adopted in MM Docket Nos. 92-266 and 93-215 do not provide sufficient incentives to stimulate children's educational programming. The materials attached hereto were distributed and used during the meeting.

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LEVENTHAL, SENTER & LERMAN

Mr. William F. Caton
December 5, 1994
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Please contact the undersigned if there are any
questions regarding this matter.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Deborah R. Coleman", with a long horizontal flourish extending to the right.

Deborah R. Coleman

Enclosure

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CHILDREN'S TELEVISION WORKSHOP
VISIT TO CHAIRMAN REED HUNDT

ON FOSTERING CHILDREN'S EDUCATIONAL TELEVISION
AND CABLE TELEVISION PROGRAMMING

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

December 2, 1994

Attending:

David Britt, President, Chief Executive Officer
Gary Knell, Senior Vice President for Corporate Affairs

SUMMARY OF POSITIONS

1. CHILDREN'S TELEVISION PROGRAMMING (MM Docket No. 93-48)

What Qualifies as "Core" Children's Educational Programming?

FCC proposal. The Children's Television Act requires licensees to serve children's educational and informational needs through their overall programming, "including programming specifically designed to serve such needs." The FCC's NOI proposes to require that qualifying "specifically designed" standard-length programming -- called "core" programming in the NOI -- be primarily educational and only secondarily entertainment.

CTW's position. CTW's comments (and those of Disney and most broadcasters) opposed the primary/secondary test as setting up a false dichotomy, since programming must "reach" before it can "teach" -- that is, must entertain or it won't be watched. For example, "Cro," a series produced by CTW which is now in its second season on the ABC Network Saturday morning children's schedule, combines basic applied science concepts with an animated comedy/adventure format in order to engage, entertain and educate a large child audience.

CTW advocates an objective test for "specifically designed" educational programming. To qualify, a program must:

- be developed with the assistance of educational advisors such as teachers or child development experts;
- be created to fulfill explicit written educational goals (a copy of which should be placed in the station's public file with its children's educational programming lists); and
- be tested for its educational effectiveness (with a copy of the results placed in the public file).

To encourage innovation, stations should get full credit for a program even if its educational goals are not fully achieved.

Advantages of CTW's proposal. First, the test quite literally implements the "specifically designed" language of the statute. And, by requiring producers (and those broadcasters who elect to create kids' educational programming) to focus on planning and executing such programming, the Act's goal of increasing the amount of children's educational programming will necessarily be met.

Second, the test is objective. The FCC does not have to decide whether a given program is educational; it can avoid subjective content-based judgments (and resulting First Amendment problems) altogether. **If the licensee has followed the above steps, its programming will be deemed to qualify.**

Third, the licensee also does not have to guess whether it is meeting the FCC's requirements. Broadcasters are given the specific guidance that they want and need.

Fourth, FCC review is facilitated. The public file information submitted with the renewal application can be quickly examined for compliance with the above objective criteria.

Fifth, the licensee is not unnecessarily burdened. Comments in the current record of this proceeding demonstrate that most producers as well as local broadcasters who produce kids' shows already use educational advisors in planning their offerings. Written objectives are also a staple of local children's programs. And, the post-broadcast evaluation need not be a formal study; it could be a focus group. See NBC's June 7, 1993 Reply Comments at 5-10, supporting CTW's proposal.

Finally, we believe that as they begin to take the educational needs of children more seriously, producers and broadcasters are also more likely to acquire a greater sense of responsibility with respect to eliminating gratuitous violence in the children's programming they create.

For the above reasons, CTW's suggested definition of qualifying "core" programming is superior to Disney's, which would simply require that a significant purpose of a qualifying program, rather than the FCC's suggested primary purpose, be to educate. Disney's proposal acknowledges that effective educational programming must also entertain, but it lacks most of the other advantages of CTW's proposal set forth above.

As an alternative to requiring that qualifying educational programming adhere to CTW's proposed developmental standards, the Commission might establish those standards as a "safe harbor" for stations voluntarily adopting them.

How Much "Core" Educational Programming is Enough?

FCC proposal. At present, there is no required minimum amount of educational and informational children's programming. The FCC suggested the possible adoption of a "processing guideline" that would permit staff grant of a license renewal application meeting the guideline.

CTW's position. CTW proposes, as a processing guideline for standard-length programming specifically designed to meet children's educational needs, the greater of three unduplicated hours per week, or ten percent of the total weekly amount of non-qualifying children's programming aired by the station. The ten percent standard should be incrementally increased to twenty-five percent over the next three to five years.

Advantages. A processing guideline should help fulfill the Act's goal of increasing the amount of programming specifically designed to educate and inform children. In addition, such a guideline will provide clearer guidance to licensees than they presently have, and will facilitate renewal review by the FCC.

2. CHILDREN'S CABLE TELEVISION PROGRAMMING: THE "GOING-FORWARD" RULES (MM Docket Nos. 92-266, 93-215)

The Operator's Cap and the License Fee Reserve.

FCC action. In its "going-forward" decision adopted last month, the Commission established an alternative procedure by which cable operators may elect to increase rates by 20 cents per month per subscriber for each new channel added to cable program service tiers. Rate adjustments pursuant to this procedure can be made at any time during the three-year period beginning January 1, 1995. Total rate increases cannot exceed \$1.20 per subscriber per month during the first two years of the three-year period or \$1.40 during the third year (the Operator's Cap). Operators additionally may recover up to 30 cents per subscriber per month for license fees for new channels (the License Fee Reserve) -- an average of only 5 cents per channel if six channels are added.

CTW's goals. At this time of exploding entertainment options in the media world, cable operators perceive little economic benefit to providing children's educational television. CTW believes it is imperative, therefore, that the Commission provide cable operators not only with sufficient incentive to add new channels to cable program service tiers, but also with an incentive to ensure that quality educational programming will have a home in the multi-channel environment that is widely available to children of all ages and income levels.

CTW's experience demonstrates that children's programming that is both educational and entertaining will attract large audiences. Striking the appropriate balance between education and entertainment, however, is neither cheap nor easy but is the product of extensive educational planning, research and production. To enable programmers to provide that kind of quality children's programming, which is now so noticeably lacking, the Commission must establish rules that permit sufficient resources to flow to producers of such programs. Unfortunately, a License Fee Reserve of only 30 cents will not provide the resources necessary for the kind of programming that would serve as a much needed alternative for America's children.

Economic analysis. CTW has been exploring the possibility of developing a new cable service which could fill a critical role for our nation's children and parents. Our economic analyses, performed with the assistance of financial advisors, indicate that with programmer license fees in the 5-cent range per month, a start-up service like our own could afford initial programming expenditures of only \$15 million annually. This range of programming dollars over an entire year would not be sufficient to support the type of research, educational planning and production qualities which are needed to encourage children to choose "edutainment" services over those aimed merely at entertaining them. Instead, we believe that a minimum programming budget of \$30 million is needed. This can only be done with license fees in the range of approximately 20 cents per channel. In order for CTW to create new educational programming in the tradition of Sesame Street on a new children's cable program channel, significant levels of resources are needed to support research, planning and production values which will attract children to the new channel.

Perversely, the going-forward rules provide financial incentives for operators to add multiple low-cost channels to regulated tiers, rather than fewer high-cost ones, since the lower the license fee, the more of the \$1.20 Operator's Cap the operator can retain. The 30-cent License Fee Reserve is too low to offset the incentive to add no-cost or low-cost channels.

Nor is the unregulated new product tier the answer: it may be ideal for "niche" channels, but ad-supported services targeted at more general audiences are unlikely to be able to compete for audience with existing basic channels servicing the same group. In addition, the new product tier is better suited for "premium" services, while CTW's goal is to provide quality educational programming to children of all income levels.

CTW proposal. To remedy these deficiencies, CTW proposes an exception to the \$1.20/\$1.40 Operator's Cap and the 30-cent License Fee Reserve for channels programmed by a "qualified educational or minority programming source," as defined in the

Commission's commercial leased access rules -- i.e., a producer that devotes substantially all of its programming to educational programming and spends more than \$15 million per year to do so or a producer that devotes substantially all of its programming to coverage of minority viewpoints, or to programming directed at members of minority groups, and which is more than 50 percent minority-owned (\$ 76.977).

The Operator's Cap for operators that add one or more channels programmed by qualified educational or minority programming sources to cable program service tiers would be increased by 20 cents per month per subscriber to \$1.40 during the first two years and \$1.60 during the third year. These operators would also be entitled to pass through to subscribers an additional 20 cents in license fees payable to qualified educational or minority programming sources, increasing the total License Fee Reserve to 50 cents. Alternatively, the existing 30-cent License Fee Reserve could be increased for all programmers.

For further information, contact:

Gary E. Knell, Senior Vice President, Children's Television Workshop, One Lincoln Plaza, New York, NY 10023, (212) 875-6301.

Dan Victor, General Counsel, Children's Television Workshop, (212) 875-6361.

Barbara K. Gardner or Deborah R. Coleman, Leventhal, Senter & Lerman, 2000 K Street, N.W., Washington, DC 20006, (202) 429-8970.